

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

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U.S. DISTRICT COURT  
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SAN JUAN, P.R.

LEVI STRAUSS AND COMPANY,

Plaintiff

v.

M/V "PHOENIX SPIRIT," etc., et al.,

Defendants

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MARINE EXPRESS, INC.,

Intervenor-Plaintiff

v.

M/V "PHOENIX SPIRIT," etc., et al.,

Defendants

CIVIL 96-2190 (JAG)

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COLBRO SHIP MANAGEMENT  
COMPANY LIMITED,

Intervenor-Plaintiff

v.

LEVI STRAUSS AND COMPANY,

Plaintiff-Intervenor's Defendant

v.

WILLIAM J. COLEMAN,

Third-Party Defendant

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This matter is before the court on practically identical motions to dismiss and/or for partial summary judgment filed by Pitea Shipping Company Limited, as owners of the M/V PHOENIX SPIRIT on June 11, 1999 (Docket No. 75), and by third-party defendant

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1 CIVIL 96-2190 (JAG)

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3 William J. Coleman on October 4, 1999. (Docket No. 87.) Levi Strauss opposed both  
4 motions on December 22, 1999. (Docket No. 96.)

5 The motions to dismiss and/or for summary judgment contain numerous exhibits.  
6 The dismissal part of the motions invokes Rule 12(b)(6), Federal Rules of Civil Procedure.  
7 Thus, because matters outside the pleadings are presented for the court's consideration and  
8 not excluded by the court, the motion is to be treated as a motion for summary judgment.  
9 Furthermore, the parties are clearly put on notice that disposition of the motions is  
10 appropriate under the more exacting standard of Rule 56. See, e.g., C.B. Trucking, Inc. v.  
11 Waste Mgmt., Inc., 137 F.3d 41, 43 (1<sup>st</sup> Cir. 1998); Vega-Rodríguez v. Puerto Rico Tel.  
12 Co., 110 F.3d 174, 177 (1<sup>st</sup> Cir. 1997); Rodríguez v. Fullerton Tires Corp., Supp. 937 F  
13 122, 125 (D.P.R. 1996), aff'd, 115 F.3d 81, 83 (1<sup>st</sup> Cir. 1997).

14 As I stated in my previous recommendation, and which I find appropriate at this  
15 time to repeat in its entirety, in the District Court of Puerto Rico, Local Rule 311.12  
16 requires a motion for summary judgment to be accompanied by a separate, short and  
17 concise statement of material facts that supports the moving party's claim that there are  
18 no genuine issues of material fact in dispute. These facts are then deemed admitted until  
19 the nonmoving party provides a similarly separate, short and concise statement of material  
20 fact establishing that there is a genuine issue in dispute. Local Rules, United States District  
21 Court for the District of Puerto Rico, Local Rule 311(12) (Michie 1996); see Morales v.  
22 A.C. Orsleff's EFTF, 246 F.3d 32, 33 (1<sup>st</sup> Cir. 2001); Ruiz Rivera v. Riley, 209 F.3d 24,  
23 26 (1<sup>st</sup> Cir. 2000); Domínguez v. Eli Lilly & Co., 958 F. Supp. 721, 727 (D.P.R. 1997).  
24 See also Corrada Betances v. Sea-Land Serv., Inc., 248 F.3d 40, 43 (1<sup>st</sup> Cir. 2001). These  
25 facts must be supported by specific reference to the record, thereby pointing the court to  
26 any genuine issues of material fact and eliminating the problem of the court having to  
27 "ferret through the Record." Domínguez v. Eli Lilly & Co., 958 F. Supp. at 727; see  
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CIVIL 96-2190 (JAG)

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Stepanischen v. Merchants Despatch Transp. Corp., 722 F.2d 922, 930-31 (1<sup>st</sup> Cir. 1983); Carmona Ríos v. Aramark Corp., 139 F. Supp. 2d 210 (D.P.R. 2001); Velázquez Casillas v. Forest Lab., Inc., 90 F. Supp. 2d 161, 163 (D.P.R. 2000). Failure to comply with this rule may result, where appropriate, in judgment in favor of the opposing party. Morales v. A.C. Orsleff's EFTF, 246 F.3d at 33; Stepanischen v. Merchants Despatch Transp. Corp., 722 F.2d at 927.

Neither Coleman nor Pitea have complied with the requirements of Local Rule 311(12). Neither has substantiated their arguments with a statement of contested facts and with "proper and specific references to the [R]ecord" as required by the anti-ferret rule. Carmona Ríos v. Aramark Corp., 139 F. Supp. 2d at 215; Domínguez v. Eli Lilly & Co., 958 F. Supp. at 728. I know that the court has the discretion to obviate application of the anti-ferret rule in some situations but it is clear that the exception makes the rule and there is no valid reason for making that exception and ignoring such rule in this case, such as, for example, that there are only legal issues involved.

In view of the above, and because the local and anti-ferret rules have clearly been violated, I recommend that the motions, Docket Nos. 75 and 87, be DENIED.

Under the provisions of Rule 510.2, Local Rules, District of Puerto Rico, any party who objects to this report and recommendation must file a written objection thereto with the Clerk of this Court within ten (10) days of the party's receipt of this report and recommendation. The written objections must specifically identify the portion of the recommendation, or report to which objection is made and the basis for such objections. Failure to comply with this rule precludes further appellate review. See Thomas v. Arn, 474 U.S. 140, 155 (1985), reh'g denied, 474 U.S. 1111 (1986); Davet v. Maccorone, 973 F.2d 22, 30-31 (1<sup>st</sup> Cir. 1992); Paterson-Leitch Co. v. Massachusetts Mun. Wholesale Elec. Co., 840 F.2d 985 (1<sup>st</sup> Cir. 1988); Borden v. Secretary of Health & Human Servs., 836 F.2d 4,

1 CIVIL 96-2190 (JAG)

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3 6 (1<sup>st</sup> Cir. 1987); Scott v. Schweiker, 702 F.2d 13, 14 (1<sup>st</sup> Cir. 1983); United States v.  
4 Vega, 678 F.2d 376, 378-79 (1<sup>st</sup> Cir. 1982); Park Motor Mart, Inc. v. Ford Motor Co., 616  
5 F.2d 603 (1<sup>st</sup> Cir. 1980).

6 At San Juan, Puerto Rico, this 21<sup>st</sup> day of August, 2001.

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JUSTO ARENAS  
United States Magistrate Judge